

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ALUMINUM BAHRAIN B.S.C.,

Plaintiff,

vs.

Civil Action

No. 2:08-CV-299-DWA

ALCOA, INC., ALCOA WORLD ALUMINA LLC,
WILLIAM RICE, and VICTOR DAHDALEH,

Defendant.

Transcript of STATUS CONFERENCE PROCEEDINGS held
on Monday, June 25, 2012, in the United States District
Court, 700 Grant Street, Pittsburgh, Pennsylvania, before
The Hon. Donetta W. Ambrose, United States District Judge

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P R O C E E D I N G S

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(In open court, 2:00 p.m.)

THE COURT: Good afternoon. Mr. McClenahan called our office this morning telling us there were people that were not able to make it from New York?

MR. McCLENAHAN: That's right, Your Honor.

THE COURT: Are they on the phone?

THE CLERK: Your Honor, they were disconnected. I'll have to get them back on the phone.

THE COURT: Okay.

(Brief pause.)

THE COURT: Good afternoon. This is Judge Ambrose for those of you who are on the phone, because I do have a court reporter here, which I normally don't at an initial scheduling conference, but I just thought we would have one here today.

We are here in the case of Aluminum Bahrain against Alcoa, Inc., et al., at No. 8-299. So I don't know if you all have done anything since the motions to dismiss were decided about conferring and trying to come up with a joint case management order. I assume that that would probably be more productive than my just doing something arbitrarily.

I would hope that you could agree. If you could

1 not, I would certainly look at different versions and
2 quickly come up with a final.

3 But I want you all to know that I'm going to be
4 out of the country from right after the Fourth of July until
5 July 23. So I would like to get an initial case management
6 conference done before that.

7 So that's one of the things that I want you to
8 address, and I want you to certainly pay close attention to
9 our local rules because we have a local rule specifically
10 addressing the discovery of electronically stored
11 information, and I would like, you know, to know that in the
12 Rule 26F report as well.

13 You all may know or may not know that we also have
14 a requirement for ADR in this Court, and that is a
15 requirement.

16 Now, I don't know if it is productive now. Our
17 rule -- the default is that it should occur within 60 days
18 of today. That might be difficult in this case. I don't
19 know if you can do that or if perhaps you might need a
20 little discovery before we do that.

21 I'm not sure. These are things I'm going to have
22 to learn from you, but we do have that, and it is a
23 requirement, and I don't see any reason that this case would
24 be exempted from that requirement.

25 So those are the kinds of things we're talking

1 about today, hopefully getting an order in place. And since
2 I didn't get anything from you before today in terms of a
3 stipulated case management order, I assume that that has not
4 been done yet.

5 So who wants to talk and tell me about what your
6 plans are for getting together and coming up with some
7 deadlines for fact discovery? I would only ask that you
8 please identify yourself for the record before you speak.
9 So does someone want to speak on behalf of the Plaintiff?

10 MR. MacDOUGALL: Mark MacDougall for Aluminum
11 Bahrain, B.S.C. We're certainly prepared, and I'm sure
12 counsel for the Defendant as well, to sit down or
13 telephonically put together a case management order or at
14 least try to very quickly.

15 THE COURT: What I would want you to do is at
16 least talk about the completion of fact discovery. Maybe --
17 and I'm not sure because I'm not sure what kind of experts
18 you would have in this case, but perhaps even the completion
19 of expert discovery and expert depositions.

20 I don't intend to go any further than that in
21 terms of an order at this time because it's my practice that
22 when discovery is complete, we get together again if the
23 case is still ongoing; and then if the case is not going to
24 resolve in some other way, I will give you 30 days to file
25 dispositive motions, and I will rule on those dispositive

1 motions; and when I rule on the dispositive motions, we get
2 together another time, and then you would have a trial date.

3 And I can tell you that even though it seems like
4 that's far in the distant future -- and it might be, but
5 might not -- that when I give you the trial date, it won't
6 be so far away -- it won't be years away. It will be months
7 away. And of course, depending -- there's so many lawyers
8 involved -- depending on what your schedules are as well.

9 So I just wanted you to know that when you get
10 together, what I would really want from you is fact
11 discovery, perhaps expert, unless you think there's a reason
12 to get together after fact discovery and before experts, and
13 you can let me know that.

14 And the ADR process that you intend to engage in,
15 and if you can agree on someone to be the mediator, we have
16 three options of ADR. I really think mediation is the
17 option for this case. That's my opinion.

18 I mean I don't think that the early neutral
19 evaluation is going to help as much as it does in some other
20 cases. And I don't see any reason why you would opt for
21 arbitration either. So I think that mediation is probably
22 the answer for this case. So those are the things that I
23 would like you to meet and confer on.

24 Our policies and procedures for ADR indicate that
25 if you can't agree on a process or a neutral, then I will

1 name someone, but you all may have someone in mind that you
2 know that perhaps isn't local. Maybe you've dealt with
3 people on a wider scale.

4 You know, it doesn't matter to me if you agree on
5 someone. I'm glad to appoint that person. So I didn't mean
6 to interrupt you, but I wanted to give you the scope of what
7 I would want from you.

8 MR. MacDOUGALL: And you would need that mediator
9 identified rather quickly if it's going to be completed
10 within 60 days?

11 THE COURT: Well, 60 days -- I differ I guess from
12 some of my colleagues. Sixty days is not a drop dead time
13 limit for me. I understand that these are -- you all have
14 huge practices, and probably the mediator you're going to
15 pick has a huge mediation practice.

16 So I recognize that 60 days might not be feasible.
17 It might not be. So I would like to know the dates for the
18 discovery cutoffs perhaps before I leave, but the mediator,
19 if you can't come to that conclusion and you need some more
20 time to work on that, because that's an important decision
21 for both sides, and if you can't, you know, perhaps that can
22 wait until the week of July 23, and we can deal with that
23 either by phone or -- if you can't agree -- or by your
24 letting me know then, and I can get out the order then.

25 MR. MacDOUGALL: Yes, Your Honor. The only other

1 thing I would like to mention that I think is relevant to
2 discovery, particularly document discovery, is that one of
3 the benefits of the last four years of criminal
4 investigation is that all the parties -- I know I can speak
5 for Alba -- have an exhaustive and well indexed electronic
6 record of documents that have been collected. I'm quite
7 sure Alcoa has the same.

8 So I would expect that those deadlines are
9 deadlines that we can roughly set in the relative near term
10 as opposed to having people going through boxes and doing it
11 traditionally.

12 THE COURT: Thank you.

13 MR. McCLENAHAN: Your Honor, Evan Chesler will be
14 speaking for Alcoa, and he's on the phone. At least I
15 believe he is.

16 THE COURT: Okay. So Mr. Chesler, do you want to
17 speak about these topics?

18 MR. CHESLER: Yes, Your Honor. Thank you. And
19 thank you, Your Honor, for the courtesy of letting us do
20 this by phone. Unfortunately, we spent a lot of time today
21 on a runway and did not successfully ever leave the runway.
22 So we very much appreciate the courtesy of being able to do
23 this remotely.

24 THE COURT: Surely.

25 MR. CHESLER: With respect to the discovery

1 matter, I agree with Mr. MacDougall that there's no reason
2 why we cannot sit down either in person or by phone very
3 quickly and attempt to come up with an agreement as to the
4 cutoff dates that Your Honor's suggested, and we certainly
5 will undertake on our side to do that forthwith.

6 And if there is a disagreement, as Your Honor
7 indicated, we'll be able to come back to you to resolve it;
8 but we'll certainly endeavor to work to an agreed upon
9 cutoff date.

10 And also, we'll confer with counsel promptly with
11 respect to the mediation issue and see if we can't come up
12 with a mutually acceptable mediator for that purpose. I'm
13 sure counsel has worked with many, as have we, and that
14 ought to be a topic that we can address promptly and have
15 our respective experiences inform us and hopefully come to
16 an agreement on that as well.

17 Your Honor, the only thing I would say is that in
18 the discovery process, given the number of people identified
19 in the pleadings who do not reside in the United States, the
20 challenge will be to try to figure out how to give us the
21 necessary time to seek and obtain the discovery we need with
22 respect to those people, but those are people who have been
23 identified in the Plaintiff's pleadings.

24 So presumably there won't be much trouble in
25 figuring out where they are and trying to use that

1 information to come to a mutually acceptable set of cutoff
2 dates that we can provide for the Court promptly.

3 THE COURT: Okay. And again, I recognize that
4 this isn't going to be something that -- you know, I want
5 this case to move quickly, but also not unreasonably as
6 well. I want, you know, the information to be obtained that
7 you need, both sides need, and hopefully that will happen
8 without too much trouble. But I don't know. There could be
9 problems.

10 Generally I tell counsel in every case that before
11 any discovery motions are filed, I would want you to call
12 me. Sometimes we just have you FAX a one-page position if
13 it's a difficult issue, you know, before the phone call.
14 Because I find that we can usually get those things resolved
15 immediately. I don't know if that will work in this case.

16 You know, I'm hopeful that we won't have to do
17 anything extraordinary. I think I will be able to handle
18 the discovery disputes unless they get to be, you know, out
19 of hand. And I'm not expecting that because I think there's
20 been a lot of information already obtained.

21 So I'm hoping that that will happen. But we'll
22 see as we move on.

23 But I still think that if there are issues with
24 discovery, it would be still beneficial for you to call
25 first before filing motions. We want to try to keep that --

1 I would like to try to keep that down and make those
2 decisions immediately, and we always put in what the
3 substance of the dispute was and a decision so there's a
4 record of everything that happens.

5 MR. CHESLER: We understand, Your Honor. Thank
6 you.

7 THE COURT: So let me think what else. Anything
8 else that you all want to talk about? I know some of you
9 came here. Yes?

10 MR. BEIZER: Your Honor, my name is Richard
11 Beizer, and with Amy Lee we represent Bill Rice, an
12 individual Defendant in this, and I would only build on what
13 Mr. Chesler said and what Mark MacDougall said.

14 Mark and I talked last week, counsel for Alba, and
15 just briefly Mark emphasized the point that he represented
16 Alba and not the Government of Bahrain; and along the lines
17 of what Mr. Chesler said, there are witnesses in foreign
18 countries who are not part of the party Plaintiff. They are
19 from the Government of Bahrain, and they're identified in
20 the Complaint as having information pertaining to Mr. Rice.
21 So that's --

22 THE COURT: And certainly they're not within my
23 jurisdiction.

24 MR. BEIZER: Apparently not, Your Honor, and that
25 is one of the issues that I just wanted to call particularly

1 to the Court's attention --

2 THE COURT: So how do you think we're going to
3 deal with that? Because I would think that probably there
4 isn't -- maybe I'm wrong -- do you think there's going to be
5 a lot of cooperation from the Government?

6 MR. BEIZER: I'm hard pressed to say that. Having
7 read yesterday's article in the New York Times about
8 political unrest in Bahrain, I'm hard pressed to say what
9 the cooperation of the Government of Bahrain is as opposed
10 to Mark's client -- as opposed to Mr. MacDougall's client is
11 likely to be in the discovery.

12 All I note is that with respect to Mr. Rice, there
13 are allegations in the Complaint about his dealings with
14 people who are members of the Government or I should say
15 were members of the Government of Bahrain because our
16 information is seven, eight years old when Mr. Rice was last
17 involved in this matter.

18 So I just alert in that that may be a problem, but
19 let's see if we can accommodate it when we negotiate a case
20 management order. But I wanted to alert the Court's
21 attention to that --

22 THE COURT: And I mean I'm really not sure how
23 we'll ever solve that problem. Any ideas, Mr. MacDougall?

24 MR. MacDOUGALL: What I will be happy to represent
25 is that Alba will do all it can to encourage and facilitate

1 any material witness.

2 Now, Alba's a publicly traded company, and it has
3 a major shareholder that after three permutations as the
4 Government of Bahrain, but some of the officials, I think
5 one in particular that Mr. Beizer is referring to, I would
6 like to talk to, too, and haven't been able to.

7 THE COURT: And may not be able to.

8 MR. MacDOUGALL: Almost certainly won't because of
9 the nature of the allegations. We're going to do everything
10 we can, but Mr. Beizer quite correctly points out that
11 our -- you know, our charter is limited, and that we will
12 certainly produce all our existing employees, but many of
13 the people involved in these allegations either are long
14 gone employees or never were employees at all.

15 MR. CHESLER: Your Honor, this is Evan Chesler. I
16 didn't want to interrupt anyone there.

17 THE COURT: No. It's fine, Mr. Chesler. Go
18 ahead.

19 MR. CHESLER: Thank you, Your Honor. I appreciate
20 counsel's statement that he's going to do all he can to
21 facilitate it because obviously that's a matter of great
22 importance to Alcoa as well.

23 By my count at least, there are 23 people who are
24 non U.S.-based people who are identified specifically in the
25 Complaint and/or the RICO case statement; and as far as I

1 can tell, only two of those 23 appear to be current
2 employees of Alba, yet, you know, the other 20-odd are
3 alleged to have played important roles in the matters that
4 are alleged in the Complaint.

5 So it's going to be of great importance for our
6 ability to defend against the charges that we obtain
7 necessary discovery from those people, and I do appreciate
8 counsel's statement that he'll do what he can to facilitate
9 it, and hopefully that will help.

10 But at the end of the day we may have a difficult
11 problem to come back to the Court with if we do run into
12 those problems because, once the allegations are made, it's
13 our duty and responsibility to prepare to deal with them,
14 and we have to take the allegations as we see them and find
15 them in the Complaint and seek to take discovery to address
16 those matters.

17 So we're going to be hard at work at that, and
18 we'll do everything we can on behalf of Alcoa to expedite
19 that and obtain the information we need.

20 THE COURT: I think it's going to be a problem. I
21 don't know how -- I don't know how to solve it at this
22 point. We'll deal with it when we have to.

23 Is there anything more? You want to say
24 something, sir?

25 MR. ESSEKS: Yes, David Esseks, representing

1 Victor Dahdaleh. I want to raise two points, not about the
2 discovery management schedule, but two matters before that,
3 Your Honor. They're linked.

4 One is concerning a 1292(b) certification request
5 that we will make of Your Honor regarding the personal
6 jurisdiction ruling that the Court issued a couple weeks
7 ago. And related to that, we're going to ask Your Honor to
8 stay discovery of Mr. Dahdaleh pending resolution of the
9 criminal charges against him that are pending in London, and
10 trial is set currently for April 2013.

11 The first bit about 1292(b) certification, Your
12 Honor, is simply to tell the Court that we were going to
13 make this request of you. We would like to schedule it on a
14 schedule convenient to Your Honor and Plaintiffs --

15 THE COURT: I mean file it when you file it.

16 MR. ESSEKS: We'll file --

17 THE COURT: And I would assume that at least Alba
18 and maybe Alcoa as well would like to say something about
19 that -- I'm not sure, but I'm sure -- or not.

20 MR. MacDOUGALL: Absolutely.

21 THE COURT: I don't know. Maybe even Alcoa. No?

22 MR. McCLENAHAN: I'll bow to Mr. Chesler, Your
23 Honor.

24 MR. CHESLER: Your Honor, I'm sorry. There were
25 two people talking at once, and I couldn't hear what you

1 just said.

2 THE COURT: Well, go ahead. You tell him.

3 MR. ESSEKS: Mr. Chesler, I'm telling the Court
4 we're going to make a 1292(b) certification request
5 regarding the issue of personal jurisdiction over
6 Mr. Dahdaleh on a co-conspirator jurisdiction theory.

7 THE COURT: And I inquired I assume that Alba
8 would like to say something about that, at least reply to
9 the motion in some fashion, and I thought perhaps maybe even
10 Alcoa.

11 MR. CHESLER: Yes, Your Honor. We certainly
12 want -- obviously we'll wait and see what the papers say,
13 but we certainly want to reserve the right to make a
14 statement about it at the appropriate time. Thank you.

15 THE COURT: Well, if the motion is filed, and I
16 assume it's going to be, and it's not only going to be a
17 motion for certification of an interlocutory appeal, but as
18 well as stay of discovery with respect to Mr. Dahdaleh.

19 So when it is filed, I don't know how much time
20 you might need to respond. You can tell me if you want. Or
21 you want to look at it first?

22 MR. CHESLER: I would appreciate, Your Honor, if
23 we could look at it, and then if -- immediately within 24
24 hours of receiving it, we would submit a request to the
25 Court for a schedule on which to respond.

1 THE COURT: Okay. That's fine.

2 MR. MacDOUGALL: No objection.

3 MR. ESSEKS: Your Honor. Very good. Thank you
4 for the 1292(b) certification. I wanted to know if the
5 Court could hear -- I would like to address the discovery
6 stay issue now at first --

7 THE COURT: Aren't you going to file a motion for
8 the stay?

9 MR. ESSEKS: Your Honor, I was going to try and
10 talk Your Honor into it today.

11 THE COURT: Well, I mean if you're going to file a
12 motion for an interlocutory appeal, I don't know, maybe -- I
13 don't know who all is prepared to respond to a stay for
14 Mr. Dahdaleh, but no, I think I probably want the motion and
15 the response on that.

16 MR. ESSEKS: Very well, Judge. We'll submit the
17 papers. Thank you.

18 THE COURT: Okay. So that we have this clear, it
19 appears that Mr. Dahdaleh is going to be filing really one
20 motion asking for two things, for an interlocutory appeal
21 and -- for certification of an interlocutory appeal and for
22 a stay of discovery as it pertains to him, Mr. Dahdaleh.

23 And soon after getting the motion, Alcoa and Alba
24 are going to be sending me something quickly that says how
25 much time they need. And you can -- you know, you can even

1 do this in a paper by FAX. Does everyone have my FAX
2 number? Okay. You can do that. Because it's really not a
3 pleading, saying how much time you need to respond. So it
4 will be on record.

5 But just to expedite things, just FAX something to
6 me saying, look, I've looked at this motion of Mr. Dahdaleh,
7 and I think I need two weeks or three weeks or whatever you
8 think you need.

9 MR. BEIZER: I know Your Honor has said Alcoa and
10 Alba can respond, but just to reserve for Mr. Rice --

11 THE COURT: Absolutely. And I did not mean to
12 exclude you. So everybody would be involved in this. You
13 would let me know for Mr. Rice then as well.

14 MR. BEIZER: We will, Your Honor.

15 THE COURT: Okay. Does anybody else want to say
16 something today? Well, I just want to say a few things
17 before I -- before we hang up just to make sure they're on
18 the record.

19 I know I told you at least one of these things in
20 2008, but a lot of things have passed since then. I want to
21 make sure there's a record of this. Although I am not
22 concerned about any of these things, I definitely want you
23 to know.

24 I want you to know that my father worked for
25 Alcoa, and I believe, as I said, I told you that in 2008, he

1 worked there from approximately 1939 to I would say 1971 or
2 1972. He was a laborer in the factory in New Kensington.
3 He was not involved in any executive position.

4 Along that line, something I just thought of
5 actually, but I wanted you to know. In nineteen -- well, 49
6 years ago I was named an Alcoa scholar.

7 Now, as it turned out, I did not take the money.
8 So I never got any money from Alcoa to go to college. They
9 had some sort of rule that you couldn't have other
10 scholarships, and I had a full tuition scholarship. So I
11 was in the -- I did not accept the Alcoa. But I was named a
12 scholar and probably am in some old magazine as an Alcoa
13 scholar.

14 Thirdly, not that I think it pertains necessarily,
15 but because the Securities and Exchange Commission is
16 involved in some criminal investigations, I wanted you to
17 know that my son is employed by the SEC. He is not in
18 enforcement in any respect. He works for the general
19 counsel, and he does not get involved in any general
20 enforcement proceedings, so I wanted to just make sure that
21 those were matters that were on the record so that everyone
22 knows.

23 MR. CHESLER: Evan Chesler, Your Honor. Thank you
24 for that. I do believe that as to the first two of those
25 matters, you informed all counsel back at the initial stage

1 of the litigation. We thank you for putting all that on the
2 record.

3 THE COURT: Yeah. I thought I did, but I want to
4 make sure it's there again. Again, I don't know that the
5 SEC thing pertains to this case, but I know it's out there.

6 Okay. Anything more at all?

7 MR. MacDOUGALL: Just a question if I may, Your
8 Honor. Mr. Esseks' motion for interlocutory appeal and his
9 motion for stay of discovery, does the Court anticipate
10 that's going to affect the case management --

11 THE COURT: No. I do not. I do not. Now, if you
12 think, again -- well, I don't know how you're going to know
13 this. But we do not normally in this court stay discovery
14 during the mediation process. And I would not do this
15 unless you all called me and said, you know what, we're so
16 close, we don't want to spend this money. Because let's
17 face it. Enormous resources have been dedicated to this and
18 will continue to be. And I understand that.

19 But normally, no, it would not. Until I have
20 signed an order, if that happens, staying discovery with
21 respect to Mr. Dahdaleh, it does not happen. Discovery goes
22 on.

23 And of course, I haven't entered an initial case
24 management order. I would like to do that, you know. I
25 think -- I would like to do that by July 5. I would.

1 But again, I don't want to be unreasonable. I
2 don't know how long it's going to take you to get together
3 to come up with this proposal. I'm hoping you can do it by
4 then, but if you can't, you can't. You know, I want this
5 case to move forward, but I don't want to be crazy about it.
6 I don't want to be unreasonable about it.

7 So again, if you can come up with something by
8 July 5, that would be great, and I'll sign it before I
9 leave. Otherwise I'll be back on July 23, and I'll give my
10 immediate attention to it.

11 MR. MacDOUGALL: Thank you, Your Honor.

12 MR. McCLENAHAN: Thank you, Your Honor.

13 MR. CHESLER: Thank you, Your Honor.

14 THE COURT: Okay. Anything more? Can you think
15 of anything, Heidi?

16 THE CLERK: No.

17 THE COURT: Okay. Thank you all very much.

18 MR. CHESLER: Thank you, Your Honor.

19 MR. ESSEKS: Have a good day, Judge.

20 (Proceedings were concluded at 2:27 p.m.)

21 - - -

22 C E R T I F I C A T E

23 I, Deborah Rowe, certify that the foregoing
24 is a correct transcript from the record of proceedings in
the above-titled matter.

25 S/Deborah Rowe _____
Certified Realtime Reporter